

By: Raymond

H.B. No. 4233

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the use of e-cigarettes in certain bars, restaurants, and places of employment; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter Y to read as follows:

SUBCHAPTER Y. USE OF E-CIGARETTES PROHIBITED IN BARS, RESTAURANTS, AND PLACES OF EMPLOYMENT

Sec. 161.751. DEFINITIONS. In this subchapter:

(1) "Bar" means an enclosed indoor establishment that is open to the public and is devoted primarily to the sale and service of alcoholic beverages for on-premises consumption.

(2) "E-cigarette" has the meaning assigned by Section 161.081.

(3) "Employee" means an individual who:

(A) is employed by an employer for direct or indirect monetary wages or profit; or

(B) volunteers the individual's services for an employer.

(4) "Employer" means a person who employs one or more individuals or uses the volunteer services of one or more individuals. The term includes:

(A) a nonprofit entity;

(B) the legislative, executive, and judicial

1 branches of state government; and

2 (C) any political subdivision of this state.

3 (5) "Place of employment" means an enclosed area under
4 the control of an employer that is used by employees of the employer
5 but is not generally open to the public.

6 (6) "Restaurant" means an enclosed indoor
7 establishment that is open to the public and is devoted primarily to
8 the sale and service of food for immediate consumption. The term
9 includes a bar located at the establishment.

10 Sec. 161.752. APPLICABILITY. (a) Except as provided by
11 Subsection (b), this subchapter preempts and supersedes a local
12 ordinance, rule, or regulation adopted by any political subdivision
13 of this state relating to the use of e-cigarettes.

14 (b) To the extent that a local ordinance, rule, or
15 regulation adopted by a political subdivision of this state
16 prohibits or restricts the use of e-cigarettes to a greater degree
17 than this subchapter, the ordinance, rule, or regulation is not
18 preempted or superseded by this subchapter.

19 (c) This subchapter does not preempt or supersede Section
20 38.006, Education Code.

21 Sec. 161.753. OTHER APPLICABLE LAWS. This subchapter may
22 not be construed to authorize the use of e-cigarettes where the use
23 is restricted by other applicable law.

24 Sec. 161.754. USE OF E-CIGARETTE PROHIBITED. A person may
25 not use an e-cigarette in a:

26 (1) bar;

27 (2) restaurant; or

1 (3) place of employment.

2 Sec. 161.755. DUTIES OF OWNER, MANAGER, OR OPERATOR OF BAR
3 OR RESTAURANT OR EMPLOYER IN PLACE OF EMPLOYMENT. An owner,
4 manager, or operator of a bar or restaurant or an employer in a
5 place of employment shall conspicuously post a sign in and at each
6 entrance to the bar, restaurant, or place of employment that
7 clearly states the use of an e-cigarette is prohibited in the bar,
8 restaurant, or place of employment, as applicable.

9 Sec. 161.756. ENFORCEMENT. (a) The department shall
10 enforce this subchapter.

11 (b) An agency of this state or a political subdivision of
12 this state that issues a license, certificate, registration, or
13 other authority or permit to a bar or restaurant or to an owner,
14 operator, or other person in control of a bar or restaurant, shall
15 provide notice to each applicant for the authority or permit of the
16 provisions of this subchapter.

17 (c) A person may file with the department a complaint
18 regarding a violation of this subchapter.

19 (d) The department or another agency of this state or a
20 political subdivision of this state designated by the department
21 may inspect a bar, restaurant, or place of employment for
22 compliance with this subchapter.

23 (e) An owner, manager, operator, or employee of a bar or
24 restaurant or an employer shall inform a person violating this
25 subchapter that the use of e-cigarettes in the bar, restaurant, or
26 place of employment, as applicable, is prohibited.

27 Sec. 161.757. INJUNCTIVE RELIEF. In addition to the other

1 remedies provided by this subchapter, the attorney general at the
2 request of the department, or a person aggrieved by a violation of
3 this subchapter, may bring an action for injunctive relief to
4 enforce this subchapter.

5 Sec. 161.758. OFFENSES; PENALTIES. (a) A person who
6 violates Section 161.754 commits an offense. An offense under this
7 subsection is a Class C misdemeanor punishable by a fine not to
8 exceed \$50.

9 (b) An owner, manager, or operator of a bar or restaurant or
10 an employer in a place of employment who violates Section 161.755
11 commits an offense. An offense under this subsection is a Class C
12 misdemeanor punishable by a fine not to exceed \$100.

13 (c) If it is shown on the trial of an offense under
14 Subsection (b) that the defendant has previously been finally
15 convicted of an offense under that subsection that occurred within
16 one year before the date of the offense that is the subject of the
17 trial, on conviction the defendant shall be punished by a fine not
18 to exceed \$200.

19 (d) If it is shown on the trial of an offense under
20 Subsection (b) that the defendant has previously been finally
21 convicted of two offenses under that subsection that occurred
22 within one year before the date of the offense that is the subject
23 of the trial, on conviction the defendant shall be punished by a
24 fine not to exceed \$500.

25 Sec. 161.759. SEPARATE VIOLATIONS. Each day on which a
26 violation of this subchapter occurs is considered a separate
27 violation.

1 Sec. 161.760. RULES. The executive commissioner shall
2 adopt rules necessary to implement this subchapter.

3 SECTION 2. As soon as practicable after the effective date
4 of this Act, the executive commissioner of the Health and Human
5 Services Commission shall adopt rules as necessary to implement
6 Subchapter Y, Chapter 161, Health and Safety Code, as added by this
7 Act.

8 SECTION 3. This Act takes effect September 1, 2021.